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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,767	03/05/2004	Peter J. Fricke	10019337-4	1995

7590 12/01/2004  
HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER

LUU, PHO M

ART UNIT PAPER NUMBER

2824

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/688,767	FRICKE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Pho M Luu	2824	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's Preliminary Amendment, filed 15 October 2003. The changes and remarks disclosed therein were considered.
2. Claims 1-46 are pending in the application.
3. The update states related to the copending application Serial No. 10/051,677 filed January 16, 2002 on page 1 of the specification now U. S. Patent Number 6,703,652 and the continuation application Serial No. 10/115,763 filed April 2, 2002 now U.S. Patent Number 6,661,691.

### ***Information Disclosure Statement***

4. Acknowledgment is made of applicant's Information Disclosure Statement (IDS) Form PTO-1449, filed 15 October 2003. The information disclosed therein was considered.

### ***Double Patenting***

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 2 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 2 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 3 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 3 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 4 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 4 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 5 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 5 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 6 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 6 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 7 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 8 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 9 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 10 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 11 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 11 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 12 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 12 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 13 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 13 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 14 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 14 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 15 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 15 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 16 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 16 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 17 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 17 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 18 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 18 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 19 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 19 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 20 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 20 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 21 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 21 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 22 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 22 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 23 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 23 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 24 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 24 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 25 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 25 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 26 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 26 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 27 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 27 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 28 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 28 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 29 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 29 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 30 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 30 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 31 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 31 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 32 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 32 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 33 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 33 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 34 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 34 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 35 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 35 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 36 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 36 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 37 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 37 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 38 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 38 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 39 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 39 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 40 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 40 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 41 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 41 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 42 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 42 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 43 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 43 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 44 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 44 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 45 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 45 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

Claim 46 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 46 of prior U.S. Patent No. 6,661,691. This is a double patenting rejection.

### ***Response to Arguments***

7. Applicant's arguments filed 23 September 2004 have been fully considered but they are not persuasive.

8. In response to applicant's argument that reference disclosed by Examiner's of Pass et al. (US. 5,949,710) as being pertinent to applicant's disclosure and not relied upon. This reference not use by examiner to rejected the entire claims 1-46 of the applicant's.

9. Examiner fully considered base on rejection of double patent of reference of Fricke et al. (U.S 6,661,691) and this not see any amendment is made from the applicant. Therefore, Fricke et al is claims as the same claims of the applicant (application number 10/688,767).



***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Pho M. Luu whose telephone number is 571.272.1876. The examiner can normally be reached on M-F 8:00AM – 5:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Richard Elms, can be reached on 571.272.1869. The official fax number for the organization where this application or proceeding is assigned is 703.872.9306 for all official communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 2824

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see

<http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PML



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PRIMARY EXAMINER